

Determination of Status of Way – 01-12
540 Massachusetts Avenue
January 3, 2012



Planning Board

TOWN OF ACTON
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DECISION
01-12

540 Massachusetts Avenue

Determination of the Status of the Existing Way at 540 Mass. Ave.

January 3, 2012

Summary: The existing way at 540 Mass. Ave. is a street for purposes of providing access and frontage to lots in accordance with section 1.3.16.4) of the Acton Zoning Bylaw and subject to the modifications, conditions, and limitations set forth herein.

This Decision of the Acton Planning Board (hereinafter the Board) is in response to the petition of Ms. Cecilia Joan Flannery of 544 Mass. Ave., Acton (hereinafter the Applicant), received on October 7, 2011, for a determination of the status of the existing way on her property (hereinafter the Way) pursuant to section 1.3.16.4) of the Acton Zoning Bylaw (hereinafter the Bylaw). The Way is located at 540 Mass. Ave. shown in the Acton GIS with the Property ID F2B-15. This parcel and adjacent parcels enumerated in this decision and owned by the Applicant are hereinafter referred to as the Site. The Board held a public hearing on the matter on December 6, 2011. Mr. Bruce Ringwall of Goldsmith, Prest & Ringwall, Inc. represented the Applicant throughout the

proceedings. Board members Ryan Bettez (Chairman), Roland Bourdon, Derrick Chin, Jeff Clymer, Kim Montella, Margaret Woolley Busse, and Ray Yacouby were present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Application cover letter from Mr. Ringwall dated October 6, 2011.
- 1.2 Soil Map.
- 1.3 Various relevant deeds and plans of record.
- 1.4 A plan entitled "Road Acceptance Plan, Massachusetts Avenue, Acton, MA" dated October 2011, drawn by Goldsmith, Prest & Ringwall, Inc, Inc. of 39 Main Street, Ayer, MA, consisting of two sheets – sheet 1, existing conditions plan; sheet 2, street improvement plan.
- 1.5 Development Impact Report.
- 1.6 Abutters list.
- 1.7 Photographs of the Way.
- 1.8 Filing Fee.
- 1.9 Departmental communication received from:
 - Acton Engineering Department, dated 12/01/11.
 - Acton Finance Department, dated 10/19/11.
 - Acton Health Department, dated 10/24/11.
 - Acton Planning Department, dated 11/29/11.
 - Acton Tree Warden & Municipal Properties Dir., dated 11/18/11.
 - Acton Water Supply District, dated 10/24/11.
 - Sidewalk Committee, dated 11/12/11.

Exhibits 1.1 through 1.8 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Applicant asked the Board to determine pursuant to section 1.3.16.4) of the Bylaw whether the Way, specifically its first +/-270 feet leading south from Mass. Ave. to a line shown on the October 2011 Plan as "End of Street", has "sufficient width, suitable grades, and adequate construction to accommodate the vehicular traffic anticipated by reason of the proposed use of the land abutting thereon or served thereby and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon". An affirmative determination by the Board would declare the Way a street for the purposes of zoning as it pertains to the proposed use or uses and thus allow the issuance of a building permit(s) on lots that would be created with frontage on the Way.
- 2.2 The documents available to the Board show reasonable evidence that the Way is "a way in existence as of March 9, 1953" within the meaning of section 1.3.16.4) of the Bylaw. On paper, the Way is shown on a 1915 record plan (Bk 4084 Pg End) in a straight 16-foot wide, +/-383 feet long right-of-way easement leading south from Mass. Ave. Later deeds refer to and rely upon it.
- 2.3 On the ground, the Way consists of a relatively straight +/-12 feet wide paved surface situated largely within the said 16-foot wide right of way. The surface appears to be in fairly good condition. There is a 4-foot shoulder to one side.

- 2.4 The Applicant proposes the following repairs and improvements to the Way:
- a) Install a new pavement apron at the Mass. Ave. entrance; and
 - b) Install a new turn-around (within an added easement) for fire apparatus and other large vehicles.
- 2.5 A more recent record plan (509 of 2009) and the Plan as submitted show the Way situated between Lot B (540 Mass. Ave.) and land owned by Chavez and Hensley (536 Mass. Ave.) on the east side, and Lot 1 (542 Mass. Ave.) and parcels A (in the rear of Lot 1) on the west side. West of Lot 1 and Parcel A is Lot A (544 Mass. Ave.).
- 2.6 The Applicant owns the Way in common with Lots A and B, and Parcel A.
- 2.7 Based on the record plans and deeds the following properties have rights to use the Way: Lot A with a single-family dwelling on it, Lot B with a 4-family dwelling on it, Parcel A (vacant) and the land owned by Chavez/Hensleigh with a 4-family dwelling on it. Lot 1 has no access rights. Land to the south of the Way shown as owned by Walker on the 2009 record plan may have rights to use the Way, although no evidence was presented in the record. Presently active use of the Way is exercised for access to the Chavez/Hensley land and to Lot B.
- 2.8 As to the proposed additional use, the Applicant is somewhat unclear – an additional house - maybe two, or four to six bedrooms.
- 2.9 The Site is in the Village Residential (VR) zoning district and within easy walking distance to West Acton Village. It appears that, if the Board determines the Way to be a street, the Bylaw would allow up to two additional lots, with each having a house on it that could contain up to four dwelling units.
- 2.10 Drawing a parallel to the creation of streets through the subdivision process where the construction of sidewalks is required or in the alternative the Board has accepted donations to the Town's sidewalk fund, the appropriate measure here is a contribution to the Town's sidewalk fund in the amount of \$13,500.00 (\$50.00 per linear foot for 270 feet of the Way).
- 2.11 The Board has received comments from various Town departments, which are listed in Exhibit 1.9 above. The Board considered these comments in its deliberations and made them available to the Applicant. They are restated herein as required plan modifications or conditions as deemed appropriate or necessary by the Board.

3 BOARD ACTION

Therefore, the Board determined at a meeting on January 3, 2012 **by a vote of ___ in favor - ___ opposed**, that the Way at 540 Mass. Ave. is a street within the meaning of section 1.3.16.4) of the Bylaw for a distance of not more than 270 feet from the sideline of Mass. Ave. or the point shown on the Plan as "End of Street", and for purposes of access and street frontage for not more than two additional dwelling units on land abutting the Way.

This determination is made subject to the following conditions and limitations:

3.1 CONDITIONS

The following conditions shall be binding upon the Applicant and its successors and assigns. Failure to adhere to the following conditions shall be reason to rescind this Decision. The Town of Acton may elect to enforce compliance with this decision using any and all powers available to it under the law.

- 3.1.1 Prior to the issuance of a building permit for any additional dwelling units with access from the Way, or the signing of any plan submitted for 'Approval Not Required' endorsement

under the Subdivision Control Law and showing new lots with frontage on the Way, the Plan shall be revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Board or its designee. Where approvals are required from persons or agencies other than the Board, the Applicant shall be responsible for providing evidence of such approvals to the Board or its designee. To the extent feasible and appropriate, the resulting final Plan and the 'Approval Not Required' plan may be shown together on one sheet for purposes of showing compliance with this decision and recording at the Registry:

- a. Mass. Ave. entrance: The improvements/repairs to the Way at the Mass. Ave. entrance shall be redesigned to be constructed in a manner to be AAB compliant for the existing sidewalk and to maintain the gutter-line on Mass Ave. To the extent possible, the Mass. Ave. entrance shall be designed to allow for emergency vehicles to enter/exit the Way without the need to obstruct on-coming traffic on Mass. Ave.
 - b. T- turnaround: Enlarge the proposed T-turnaround in front of the 540 Mass. Ave. building to accommodate SU-30 size vehicles. Specify that the rest of the existing parking area in the location of the proposed turnaround shall be removed and the area loamed and seeded or otherwise landscaped.
 - c. Vehicle Parking: Show sufficient number of parking spaces for the existing and proposed uses on Lots A and B, and Parcel A with access from the Way to meet the Bylaw requirements for 2 spaces per dwelling unit, including dimensions for spaces and maneuvering aisle as required in the Bylaw. Garage spaces may be counted in the total.
 - d. Common Drive Maintenance Agreement and Covenant: Submit for approval by the Board or its designee a Common Drive Maintenance Agreement and Covenant that meets the requirements of section 3.8.1.5 p) of the Bylaw and section 10.1.1.5 of the Acton Subdivision Rules and Regulations and that is generally consistent with other documents on record that the Board approved for such purposes within the Town of Acton.
- 3.1.2 Prior to the issuance of a building permit for any additional dwelling units with access from the Way or the signing of any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing lots with frontage on the Way, the Applicant shall:
- a. Complete the improvements of the Way as shown on the Plan and as required herein; or
 - b. Provide the Board with a performance guarantee in accordance with section 6 of the Acton Subdivision Rules and Regulations.
- 3.1.3 The Way shall remain a private way. It shall not be accepted as a public way, nor shall the Applicant or the owners of any lots with frontage on the Way file a petition with the Town to accept it as a public way.
- 3.1.4 The Way in its entirety shall be maintained by the owners of lots with frontage on the Way in accordance with the Private Way Covenant and Agreement as amended herein. This shall include the removal of snow and ice. The Applicant and the owners of lots with frontage on the Way shall not petition the Town to provide snow and ice removal services in the Way or to provide any other maintenance and upkeep of the Way.
- 3.1.5 Prior to the issuance of a building permit for any additional dwelling units with access from the Way, or the signing of any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing new lots with frontage on the Way, the

Applicant shall receive approval from the Acton Fire and Engineering Departments for street addresses for the new homes or lots.

- 3.1.6 All work on the Site shall be conducted in accordance with the terms of this approval, and shall conform with and be limited to the improvements shown on the Plan as approved hereunder.
- 3.1.7 No work within the layout of Mass. Ave. shall commence without a "Permit from the Town to Construct within a Public Way".
- 3.1.8 The installation of water service lines shall be made in compliance with requirements of the Acton Water Supply District.
- 3.1.9 Any construction within the West Acton Local Historic District and subject to the Historic District Bylaw shall require a Certificate of Approval or Certificate of Non-Applicability by the Historic District Commission.
- 3.1.10 Prior to the issuance of a Certificate of Occupancy for any additional dwelling units with access from the Way, the Applicant shall donate to the Town of Acton \$13,500.00 for purposes of constructing sidewalks within the Town of Acton.
- 3.1.11 Upon completion of all work as shown on the Plan as approved hereunder, and before the final release of any performance guarantee, the Applicant shall submit:
 - a. An as-built plan for the Way, drainage, utilities, and other improvements within or related to the Way, and survey monuments for the lots with frontage on the Way.
 - b. A certification from a registered professional engineer stating that the project was constructed according to the Plan as conditioned and approved hereunder.
- 3.1.12 This Decision shall be referenced on any plan submitted for 'Approval Not Required' endorsement under the Subdivision Control Law and showing lots with frontage on the Way.
- 3.1.13 The Plan approved hereunder, and any 'Approval Not Required' plan showing lots with frontage on the Way, shall not be recorded with the Middlesex South District Registry of Deeds or the Land Court unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the Plan have been paid in full. If not paid at the time of endorsement of the Plan, the Board will add a Plan note to remind the Registry of Deeds or the Land Court of this legal requirement.
- 3.1.14 This Decision, 'Approval Not Required' plans with lots having frontage on the Way, the Restrictive Covenant under section 6 of the Subdivision Rules if any, and the Private Way Maintenance Agreement and Covenant as required herein shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit on the Site.

3.2 LIMITATIONS

The determination of the Board and the authority granted to the Applicant under this decision is limited as follows:

- 3.2.1 This determination that the Way is a street within the meaning of section 1.3.16.4) of the Bylaw applies only to the land and use specified herein. The Way shall not be considered a street under zoning for any other land use or any other parcel of land. Further, this determination is limited only to the portion of the Way specified herein. No determination is made herein with respect to any other portion of the Way.

- 3.2.2 The validity of this determination shall expire, if no building permit is issued on the Site for an use authorized hereunder within two years from the date of filing this decision with the Town Clerk, or if the improvements on the Way are not completed in accordance with the approved Plan within 3 years from the date of filing this decision with the Town Clerk. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to this decision and to require any appropriate modifications of the Plan.
- 3.2.3 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this decision with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.
- 3.4.1 Other approvals or permits required by law and other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Bowen, Town Clerk

Date

Copies furnished:

Applicant - certified mail #	Building Commissioner	Health Director
Town Clerk	Town Engineer	Municipal Properties Director
Fire Chief	Natural Resources Director	Town Manager
Historic District Commission	Police Chief	Acton Water District
	Assistant Assessor	

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